

SUPREME COURT COPY

S 155094

IN THE SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES

Court of Appeal, Fourth Appellate District, Division three
(Case No. G036096, G036408, G036868)
Orange County Superior Court (Nos. J.C.C.P. 4392, 04CC00647)
Honorable David C. Velasquez

APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS
BRIEF IN SUPPORT OF PETITIONER THE RECTORS, WARDENS AND
VESTRYMEN OF ST. JAMES PARISH IN NEW PORT BEACH,
CALIFORNIA

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AN UNINCORPORATED ASSOCIATION

SUPREME COURT
FILED

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.520(f), the Diocese of San Joaquin, a California unincorporated association, respectfully requests leave to file the attached amicus curiae brief in support of petitioner The Rector, Wardens and Vestrymen of St. James Parish in Newport Beach, California, a California nonprofit corporation. This application is timely made pursuant to the Court's order filed on May 30, 2008, permitting the Diocese of San Joaquin to file its amicus curiae brief on or before June 18, 2008.

THE AMICUS CURIAE AND ITS INTEREST IN THIS APPEAL

The Diocese of San Joaquin has an interest in this appeal within the meaning of rule 8.520(f)(3) of the California Rules of Court as set forth in the declaration of its Co-Chancellor, Russell G. VanRozeboom.

I, Russell G. VanRozeboom, declare:

1. I am an attorney at law licensed to practice in the State of California and I am Counsel to the firm of Wild, Carter & Tipton in Fresno, California.
2. In addition, I am a Co-Chancellor, or General Counsel, to the

Diocese of San Joaquin, an unincorporated association (the “Diocese”).

3. The Diocese of San Joaquin was, from 1961 to December 2007, one of the dioceses of the Episcopal Church, a constituent member of the worldwide Anglican Communion. The members of the Diocese were the local Episcopal churches (called “parishes”) located in fourteen Central Valley counties of California. The Diocese was, and continues to be, governed by California Corporations Code section 18000 et seq., and by its internal “Constitution” and “Canons” (akin to bylaws). The highest legislative body of the Diocese is its Annual Convention.

4. On December 8, 2007, the delegates to the Diocese’s Annual Convention voted overwhelmingly (90 percent) to end the Diocese’s spiritual affiliation with the Episcopal Church and affiliate instead with the Anglican Province of the Southern Cone of America, another member church of the worldwide Anglican Communion. I was appointed by the Bishop of San Joaquin to act as Chancellor for the 2007 Annual Convention pursuant to Article VI.3 of the Diocesan Constitution and I was present at all relevant times.

5. At the 2007 Annual Convention, the Diocese expressed its

collective will to disaffiliate from the Episcopal Church by voting overwhelmingly to amend that portion of its Constitution to delete the language whereby it previously “acceded” to the Constitution and Canons of the Episcopal Church.¹ The canonical requirements for notice, quorum and super-majority vote by orders were observed.

6. The Diocese’s Constitution reserved to it the unqualified right to make this amendment and nothing in the Constitution and Canons of the Episcopal Church forbade or restricted the Diocese from taking this action. To my knowledge, the Diocese of San Joaquin is the first diocese to leave the Episcopal Church since the Civil War when nine dioceses departed to form an independent church in the Southern states.

7. Following the vote at the Diocese’s Annual Convention in December 2007, each parish was given the choice to stay with the Episcopal Church along with permission to keep all of its own property.

1

Affirmative votes of two successive Annual Conventions are necessary to amend the Diocese’s Constitution. The delegates to Annual Convention 2006 voted, again overwhelmingly, to disaffiliate from the Episcopal Church. Annual Convention 2007 was the second and final vote necessary to finalize the amendment to disaffiliate.

The vast majority of the Diocese's forty-seven parishes followed it out of the Episcopal Church and into affiliation with the Anglican Province of the Southern Cone. However, seven parishes chose to remain with the Episcopal Church. They were permitted to leave and take their property with them with the blessings of the Diocese and its bishop, The Rt. Rev. John-David Schofield.²

8. Three months after the Diocese voted to disaffiliate, the small minority of stay-behind parishes, in concert with the Episcopal Church, purported to conduct a separate "Special Diocesan Convention" where a "re-vote" was taken to reverse the democratic vote of the majority and to install new leaders including a new diocesan bishop. The new diocesan bishop was also designated as the incumbent of the Diocese's corporation sole that held real property in trust for many of the disaffiliating parishes. In addition, at the "Special Diocesan Convention" the minority adopted the 2003 edition of the Diocese's internal governing documents thereby

²

Bishop Schofield is currently a member of the House of Bishops of the Anglican Province of the Southern Cone and under the jurisdiction of its archbishop, The Most Rev. Gregory J. Venables. Bishop Schofield's status as a member of the Episcopal House of Bishops is the subject of dispute.

nullifying several post-2003 constitutional and canonical amendments validly adopted by majority rule. None of these actions, including the election of a new diocesan bishop, complied with the notice, quorum, election or amendment requirements of the Diocese's Constitution and Canons. In addition, these actions did not comport with the Constitution and Canons of the Episcopal Church.

9. Following the "Special Diocesan Convention" held by the minority, the new diocesan bishop filed papers with the California Secretary of State purportedly installing himself as the incumbent of the Diocese's corporation sole (Corp. Code, § 10010), renaming the corporation and instituting other material changes. The object of this self-help enterprise was to seize the trust entity that holds title for the benefit of some, but not all, of the disaffiliating parishes.

10. In addition, the minority caused to be filed, in the name of the Diocese (although they have no authorization to act for it), a suit against Bishop Schofield and a corporation belonging to the Diocese. That suit is entitled *Diocese of San Joaquin, et al. v. David Mercer Schofield* (Fresno County Superior Court Case No. 08CECG01425) (the "Suit"). The Suit

will determine, among other things, whether the minority is the “true” or “real” Diocese of San Joaquin and whether the minority’s appointed bishop or Bishop Schofield is the incumbent of the Diocese’s corporation sole. At this point, the claims of the minority and the Episcopal Church are nothing more than unproven assertions made in the complaint filed in the Suit.

11. The Suit is similar to this Appeal in that both involve minorities of disgruntled members of a nonprofit organization (be it the Diocese or St. James’ Church Corporation) who, dissatisfied with a vote of the majority, withdrew from the organization and purported to “elect” new “leadership” for it. In both cases, the “leadership” purportedly “elected” by the minority of members has then sued in civil court demanding control over the corporate machinery and property of the organization in question. The true Diocese of San Joaquin (which is now affiliated with the Anglican Province of the Southern Cone) thus has an interest in the outcome of this Appeal.

I declare under penalty of perjury that the forgoing is true and correct and that this declaration was executed on June 17, 2008, at Fresno, California.


Russell G. VanRozeboom

NEED FOR ADDITIONAL BRIEFING

The Diocese of San Joaquin seeks permission to file an amicus curiae brief addressing only one issue, namely, whether California courts should use “neutral principles of law” in resolving church property disputes. The Diocese believes it has additional and different perspectives to present concerning this issue due to its former position as a diocese in the Episcopal Church. Specifically, the Diocese believes “neutral principles of law” should be adopted as the standard of review by California courts for church property disputes for the following reasons, among others:

- The “hierarchical” or “principles of government” approach promotes an insidious form of creeping imperialism whereby a so-called “superior body” exercises power and authority not because it obtained consent from its members to do so, but because the civil courts are powerless to inquire into and correct abuses. The Diocese can demonstrate from evidence contained in the record on appeal that such may be the case with the Episcopal Church;

- The “hierarchical” or “principles of government” approach forces trial courts into the awkward position of labeling churches as “hierarchical” or “congregational” and then deciding whether the particular level of government is—to coin a phrase— “governmental enough” to resolve the dispute. The labeling process itself creates bias and carries with it unwarranted assumptions. Trial courts should stick to what they do best--and what the U.S. Supreme Court recommends--that is to apply neutral principles of law which are readily understood by judges and lawyers and applied daily by them in a variety of situations;
- Where a religious denomination seeks to avoid financial and legal liability by encouraging its members to establish separate entity status under the California Corporations Code, the religious denomination should expect neutral principles of law to be applied if a dispute erupts between the corporate entity and the religious denomination.

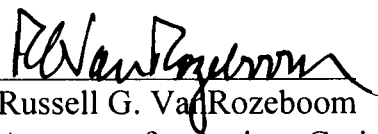
CONCLUSION

The Diocese of San Joaquin submits that consideration and discussion of its perspectives concerning the “neutral principles” approach may assist the Court in deciding this matter. For this reason, the Diocese requests that the Court accept the accompanying brief for filing in this case.

DATED: June 17, 2008

Respectfully submitted,

WILD, CARTER & TIPTON
A Professional Corporation

By 
Russell G. VanRozeboom
Attorneys for Amicus Curiae
Diocese of San Joaquin

[Brief begins on next page]

BRIEF OF AMICUS CURIAE DIOCESE OF SAN JOAQUIN

COUNTER STATEMENT OF FACTS

To provide context and a proper focus, the factual record on appeal needs to be addressed in two ways: (1) to illuminate a mis-characterization of the record made by respondents that exemplifies how an insidious form of creeping imperialism can flourish under the “hierarchical deference” approach; and, (2) whether the presentation of additional information concerning the relationship of a diocese with the Episcopal Church would aid the Court in its determination of the Appeal. These matters will be discussed in order.

A. Respondents’ Representations About “Unqualified Accession” By Dioceses Are Not True.

Respondents assert that the Episcopal Church is “hierarchical” in the sense that it is comprised of a series of ascending “subordinate” entities consisting of parishes and dioceses. Respondents Diocese of Los Angeles and the Episcopal Church fortify their contention that dioceses are “subordinate” entities with representations in their respective briefs that: “[e]ach diocese adopts as part of its Constitution ‘an unqualified accession

to the Constitution and canons of this Church.’” (Emphasis added.) (See Plaintiff and Respondent’s Br., at p. 11; see also, Episcopal Church Br., at p. 6 [“All dioceses adopt in their Constitution ‘an unqualified accession to the Constitution and Canons of this Church.’”].) These factual representations are untrue.

As will be shown, the Constitution of the Diocese of Los Angeles does not adopt, let alone mention, any “unqualified accession.”³ In fact, most diocesan constitutions contain no such “unqualified accession” language. This is so because the “unqualified accession” language was added to the Episcopal Church’s Constitution in 1982 and applies only to “new dioceses” admitted after the date of the amendment. Most dioceses in the Episcopal Church were admitted before 1982 so the amended language does not apply to them and is not reflected in their respective diocesan constitutions. This subtle misrepresentation by respondents is a symptom of a serious flaw that is inherent in the “hierarchical deference” approach; self-interested religious denominations will overstate the extent of their power

³

See Constitution of the Diocese of Los Angeles, Art. II, Appellant’s Appendix, Vol. 4, p. 736; Episcopal Church Appendix, 4 A.A. 693.

and authority in order to prevail in every dispute. Under a “neutral principles” analysis, a civil court is unlikely to be misled; under a “hierarchical deference” approach the court may be powerless to do anything about it.

B. The Episcopal Church Is a “Hybrid” and Not a True “Hierarchical” Denomination.

While there are court decisions across the nation describing the Episcopal Church as “hierarchical,” all of them focused on disputes between parishes and dioceses. None of these cases directly addressed and analyzed the relationship between a diocese and the Episcopal Church. It has simply been assumed by many that a diocese is a mesne subordinate body of a hierarchical organization. This is the danger of applying labels to religious organizations because labels carry with them certain assumptions that may unfairly circumscribe the role of the civil courts in resolving church property disputes; particularly under a “hierarchical deference” approach.

To develop this discussion, the Diocese attaches a brief declaration from The Rt. Rev. William C. Wantland, who is an Episcopal bishop, a

canon law expert and a former law professor. While submitting a declaration of this sort is unusual, there is precedent for an amicus curiae to do so for the purpose of giving the Court a wider perspective about the issues at hand. (*Bily v. Arthur Young & Company* (1992) 3 Cal.4th 370, 405 [“Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties. . . . For these reasons, we are inclined, except in cases of obvious abuse of the amicus curiae privilege, not to employ orders to strike as a means of regulating their contents.”].)

The interpretation and application of bylaws and the internal rules and regulations of religious organizations is properly the subject of expert testimony. (*Stevens v. Roman Catholic Bishop of Fresno* (1975) 49 Cal.App.3d 877, 883.) Bishop Wantland is uniquely qualified to express an expert opinion on the structure of the Episcopal Church. The majority of the source material he relies upon is available either in the record on appeal or from the public domain website of The Archives of The Episcopal Church at: <http://www.episcopalarchives.org/>.

While Bishop Wantland’s declaration is cursory, it amply demonstrates that whether a denomination is truly “hierarchical” is not

always clear as some courts have recognized. “A church may, however, be hierarchical in some matters and congregational in others. For example . . . a church may be hierarchical in terms of internal administration and discipline, and yet congregational as far as control and use of its property is concerned.” (*The Primate & Bishops’ Synod of the Russian Orthodox Church Outside Russia v. The Russian Orthodox Church of the Holy Resurrection, Inc.* (1993) 35 Mass.App.Ct. 194, 196-197, 617 N.E.2d 1031 [internal quotations omitted], *aff’d*, 418 Mass. 1001, 636 N.E.2d 211 (1994).) The Diocese submits that the Episcopal Church falls into this hybrid description; it is hierarchical in terms of clergy discipline but autonomous in the way dioceses hold and administrate property. “Thus, the relationship between a diocese and a national structure is in the nature of a congregational relationship.” (+Wantland Decl., ¶ 4.)

STATEMENT OF ISSUES

The Diocese of San Joaquin addresses only one issue in this Appeal, namely, whether California courts should use “neutral principles of law” in resolving church property disputes.

ARGUMENT

A. California Courts Should Use “Neutral Principles Of Law” as the Standard of Review in Church Property Disputes.

1. Labels are Misleading: The Episcopal Church Is Not a True Hierarchical Denomination Because Dioceses Are Not Subordinate Units.

The problem with labels is that they suggest a predetermined result.

Labeling a religious denomination as “hierarchical” without first conducting a comprehensive analysis of its structure can lead to a faulty conclusion that all components of the denomination are “subordinate” units and subject to a “hierarchical deference” standard of review. Thus, a diocese can be misclassified as “subordinate” based on nothing more than a line of cases discussing the relationship of parishes. The relationship of diocese to the Episcopal Church should, in all fairness, be determined based on an independent review and analysis and not on conjecture drawn from cases involving parishes.

Respondents’ position is that once a church structure is classified as

“hierarchical,” a civil court’s involvement in the property dispute ends with a determination that there exists some superior body at the top of the structure. Having identified a “superior body,” the civil court must then defer to its determination or those who claim to be operating under its authority. Judicial inquiry into the power and authority of the superior body (or its agents) to make such a determination and whether there exists any judicatory structure or procedure for actually doing so constitutes an impermissible intrusion into “church polity,” violates the First and Fourteenth Amendments and is strictly out of bounds.

What constitutes a “hierarchical” church in the first place is often not well defined, leaving the civil court befuddled and the self-interested church in the position of ex post facto arbiter and ultimate winner in all circumstances. “Hierarchical deference” breeds a form of creeping imperialism where the “superior body” continues to gain power and authority not because it had the consent of its members, but because the civil courts are rendered powerless to inquire into and correct abuses.

Here, the potential for inappropriately applying “hierarchical deference” is substantial because the Episcopal Church is, in reality, a

hierarchical hybrid. Dioceses of the Episcopal Church are not “subordinate” units of a national church. Nowhere in the Constitution and Canons of the Episcopal Church are dioceses referred to as, or in any way designated, “subordinate” entities. The Constitution of the Episcopal Church contains no supremacy clause, no reversionary clause, and no limitation on the right or power of a diocese to amend its constitution to withdraw from membership. (+Wantland Decl., ¶ 4.) The Episcopal Church is structured this way because it is a confederation of equals formed by pre-existing dioceses; that is, dioceses formed immediately after the American Revolution by priests and laity formerly of the Church of England. (*Id.*)

In 1789, the dioceses formed after the American Revolution gathered together in convention and adopted an eight-article constitution. Thus, the existing dioceses created the Episcopal Church and not the other way around. The “unincorporated association”—as the Episcopal Church refers to itself— is actually a confederation of equals bound together by an ecclesiastical constitution designed to create a uniform system of worship based on the Book of Common Prayer. (+Wantland Decl., ¶ 4.) The Episcopal Church is hierarchical in the sense of its three-tiered ministry of

bishops, priests and deacons, but autonomous in the way property is held and administered by the dioceses.⁴ Because the Episcopal Church was the creation of existing dioceses, its Constitution is controlled and limited by the power conferred on it by the dioceses. Powers not specifically delegated by the dioceses and enumerated by the Constitution and Canons were, and are, retained by the dioceses.⁵

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The Constitution and Canons of the Episcopal Church comprise 227 pages of which 61 pages are devoted to ecclesiastical discipline and set forth detailed procedures for making accusations, establishing and regulating judicatory bodies, and creating levels of appellate review. The Federal Rules of Evidence and a modified version of the Federal Rules of Civil Appellate Procedure are used in clergy disciplinary proceedings. See +Wantland Decl., ¶ 5. As to temporal matters, there are no judicatory bodies and no dispute resolution procedures set forth. The Episcopal Church simply has no authority to intervene into the affairs of its member dioceses, beyond having original jurisdiction to discipline a bishop for an ecclesiastical violation. As to temporal matters, dioceses have plenary power over their property and over the admission of parishes into union with them. The Episcopal Church so admits in its brief to this Court. See the Episcopal Church's brief at page 8: "Accordingly, the Constitution and Canons of the Diocese of Los Angeles set forth the exclusive means for creating or disestablishing a parish in that area." Emphasis added.

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A very few dioceses (perhaps three) have elected to designate themselves as "subordinate" entities in their governing documents. See, +Wantland Decl., ¶ 8. However, this designation is strictly the voluntarily action of the diocese and is not mandated under the Constitution of the

2. Respondents' Representation that All Dioceses Adopted an "Unqualified Accession to the Constitution" of The Episcopal Church Is Not True and Shows an Inherent Defect in the "Hierarchical Deference" Approach, Namely, the Ability of a Self-Interested Body to Overstate Its Authority and Manipulate the Outcome.

An previously noted, both the Diocese of Los Angeles and the Episcopal Church represent in their respective briefs that: "[e]ach diocese adopts as part of its Constitution 'an unqualified accession to the Constitution and canons of this Church.'" (Emphasis added.) (See Plaintiff and Respondent's Br., at p. 11; Episcopal Church Br., at p. 6 ["All dioceses adopt in their Constitution 'an unqualified accession to the Constitution and Canons of this Church.'"].) This representation forms an integral part of their argument for "hierarchical" classification because, to follow respondents' reasoning, "unqualified accession" translates into

Episcopal Church. A diocese's election to designate itself as a subordinate body draws a striking parallel with *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599, 626: "[t]he last church is Holy Apostles, incorporated in 1963. That church is specifically identified as a subordinate body of a national body subject to the provisions of Corporations Code sections 9203 and 9802." In *Barker*, Holy Apostles designated itself as a subordinate entity in its corporate charter and this designation ultimately defeated its ownership claim to the parish real property.

“subordinate” entity and a “hierarchical deference” standard of review.

However, the representation of “unqualified accession” is factually wrong.

Under the original 1789 Constitution of the Episcopal Church, a diocese could “be admitted” as a member “on acceding to this Constitution.” (+Wantland Decl., ¶ 7.) This “accession” to the Constitution does not mean, and cannot be construed to mean, a wholesale delegation by a diocese of all powers, rights and prerogatives. The original admission standard for a diocese —“acceding to this Constitution”— remained essentially unchanged for nearly 200 years until Article V.1 was amended in 1982 to add the language “unqualified accession;” a clear admission by the Episcopal Church that its powers under the “acceding to” language was extremely limited.⁶ (*Id.*)

However, by its very wording, the 1982 amendment relates only to “new dioceses” and not to dioceses already in existence. (See Art. V.1,

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A copy of the resolution adopted by the 67th General Convention meeting in New Orleans in 1982 adding the “unqualified accession” language is attached to Bishop Wantland’s declaration as Exhibit 1 and is also available online at the The Archives of The Episcopal Church. The public domain website address of the Archives is set forth in the upper banner on Exh. 1.

Episcopal Church's appendix, 3 A.A. 419.) "New dioceses" joining the Episcopal Church after 1982 must include in their governing documents "an unqualified accession to the Constitution and Canons of this Church." This amended article does not apply to any diocese admitted before 1982. The Diocese of San Joaquin became a member diocese in 1961 and its Constitution never contained the "unqualified accession" language. The Constitution of respondent Diocese of Los Angeles does not contain the "unqualified accession" language; only the original "acceding to" language. The contrary representations of respondents' lawyers in their respective briefs to this Court are simply wrong. The Diocese of Los Angeles's current Constitution reads, in pertinent part, as follows: "[t]he Church in the Diocese accedes to the Constitution and Canons of the One Holy Catholic and Apostolic Church, known in law as the National Church otherwise known as the Episcopal Church" (Episcopal Church's appendix, 4 A.A. 693, at Art. II.)

3. Under "Hierarchical Deference" Respondents Might Get Away with Misrepresenting "Unqualified Accession;" Under "Neutral Principles" They Will Not.

When confronted about their misrepresentation of "unqualified

accession,” respondents are likely to assert they cannot be challenged under the “hierarchical deference” standard of review and take refuge in the sweeping language of *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 440. In *Milivojevich*, the Supreme Court reversed the decision of the Illinois Supreme Court because it “impermissibly substitute[d] its own inquiry into church polity and resolutions based thereon of those disputes.” (*Id.*, at p. 708.) In support of the decision, Justice Brennan, writing for the majority, stated:

“Consistently with the *First* and *Fourteenth Amendments* ‘civil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide such disputes] . . . Such a determination . . . frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide . . . religious law [governing church polity] . . . would violate the *First Amendment* in much the same manner as civil determination of religious doctrine.’ [Citation omitted.]” (*Id.*, at 708-709.)

If this is indeed what “hierarchical deference” means, then a California Court applying this standard of review will understandably be confused and by what amounts to a Catch-22 situation. The court must

determine whether the denomination is “hierarchical,” but this determination must somehow be made without using essential components of the tried-and-true “neutral principles of law” approach. “Hierarchical deference” will prevent the court from making any meaningful analysis concerning the power and authority conferred on the Episcopal Church and whether it has any adjudicatory structures to resolve a property dispute other than its own say-so. Under “hierarchical deference” then, it will be the Episcopal Church’s say-so that will likely control what “unqualified accession” means and to whom it applies. Such an approach cannot lead to a just result.⁷

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Milivojevich is a disturbing case when considered in the context of the structure of the Episcopal Church. In *Milivojevich*, the Diocese was denied admission to the Mother Church until changes were made whereby the Mother Church’s consent was required in order for the Diocese to amend its constitution. *Id.*, at 700-701. As it turns out, it was this act of subordination that ultimately led to the Diocese’s downfall. After a dispute arose, the Diocese declared itself autonomous and reinstated provisions of its former constitution without the approval of the Mother Church. *Id.*, at 705. The state supreme court found a way to uphold the Diocese’s action and the U.S. Supreme Court reversed. However, the Constitution and Canons of the Episcopal Church in no way restrict a diocese from amending its constitution. Nevertheless, under a “hierarchical deference” theory, the Episcopal Church will use *Milivojevich* to bludgeon the California courts into an unjust result.

On the other hand, an analysis conducted under “neutral principles of law” is likely to produce a different and more equitable result that takes into account the mutual intentions of the parties at the time of relationship was formed. Under “neutral principles,” the court will apply the traditional rules governing contract interpretation. (See, Civ. Code, §§ 1635 et seq.) Ambiguities in contract documents involving California dioceses and parishes will receive evidentiary interpretations favoring the retention of their natural rights. (Code Civ. Proc., § 1866.) These rules will be applied by a truly disinterested party, a civil court, and not by a self-interested body or other agents of the Episcopal Church who are looking to consolidate power and not search for the truth and who are not bound to follow California law. It is only fair that religious entities formed under the Corporations Code receive the same measure of protection that is provided to California’s other corporate citizens.

4. California Appellate Court Decisions Have Established a Track Record of Successfully Applying “Neutral Principles of Law.”

There is no dispute that for the past 30 years, California courts have been consistently using “neutral principles of law” to resolve church

property and related disputes. Recent decisions from the California appellate courts demonstrate that over this period the trial courts have gained sophistication and insight into the “neutral principles” approach and have achieved just results without impinging on the First Amendment.

Concord Christian Center v. Open Bible Std. Churches (2005) 132 Cal.App.4th 1396, is a good example of a California trial court effectively using “neutral principles” yet steering clear of religious entanglement. As the appellate court in *Concord Christian* observed:

“On the other hand, because the issues before the trial court affected the ultimate *control* of Concord Christian’s property and assets, the trial court properly ruled that it had jurisdiction to adjudicate these issues ‘to the extent [it could] do so without impinging on exclusive ecclesiastical authority.’ In both its extensive statement of decision and the judgment entered thereon, the trial court carefully separated its own determinations based on substantial evidence from those in which it deferred, on ecclesiastical grounds, to the decisions of respondents . . . ” (*Id.*, at 1412-1413.)

Concord Christian is important in two respects. First, it illustrates that a hierarchical church can prevail under “neutral principles of law” because one of the factors to be considered by the court is “deference” to the religious denomination’s governing documents. Where the governing

documents clearly dictate the outcome, California courts have deferred to them. The “hierarchical deference” approach is not as flexible, however, and contains the added risk of an unjust result via an ex post facto ecclesiastical fiat derived from a power source that cannot be identified.

Second, *Concord Christian* shows that “neutral principles” provides a better opportunity to correct mistakes committed by the trial court. Under “neutral principles” an appellate court can follow the trial court’s reasoning and see how it navigated its way around ecclesiastical issues or whether it overstepped its bounds. Either way, there is a road map the appellate court can follow. “Hierarchical deference,” on the other hand, does not provide the same opportunity for appellate review because it essentially locks the trial court out of a meaningful analysis and, instead, makes it the handmaiden of any decree issued under the Church’s ecclesiastical seal. There is no roadmap for the appellate court; only the say-so of the religious denomination.

Another recent appellate court decision of interest is *Singh v. Singh* (2004) 114 Cal.App.4th 1264. In *Singh*, the court resolved a dispute

concerning directorships of a religious non-profit corporation. One slate of directors apparently contended they had life terms under religious law. The corporate bylaws did not specify a term of office and those who claimed for-life directorships did so based on the religious customs and practices of the denomination. They contended, unsuccessfully, that the civil court was prohibited under the First Amendment from adjudicating this issue.

After finding that no religious authority in the denomination had spoken on the issue and no judicatory body existed, the trial court went on to interpret the bylaws under contract law and the applicable provisions of the Corporations Code. The trial court determined that no right to life terms existed under this analysis and a directors' election was ordered. On appeal, the trial court's decision was affirmed; "neutral principles" were properly applied and the result was just. Application of "hierarchical deference" as promulgated by the majority decision in *Milivojevich* would appear to proscribe such a searching inquiry into religious customs and the denomination's bylaws. The parties in *Singh* would have been left with a dysfunctional corporation. Again, "neutral principles" supplied a remedy where "hierarchical deference" ala *Milivojevich* would not.

5. Neutral Principles Is the Recommended Method of Review and, for the Past 30 years, California Courts Have Become Accustomed to Applying It.

In *Jones v. Wolf* (1979) 443 U.S. 595, the U.S. Supreme Court acclaimed the virtues of “neutral principles” and commended it to state courts for use in resolving church property disputes:

“The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general - flexibility in ordering private rights and obligations to reflect the intentions of the parties.” (*Id.*, at 603.)

Respondents adamantly deny *Wolf v. Jones* can be read as a recommendation by the High Court of “neutral principles,” but the words of the opinion speak for themselves. To be sure, the Supreme Court of Kentucky read *Jones v. Wolf* as a recommendation that the state courts adopt “neutral principles:” “[w]ithout mandating use of the neutral-

principles of law approach, the Supreme Court delivered a ringing endorsement of it as follows: . . . [*Wolf v. Jones* excerpt at p. 603 omitted] . . . Thus, this nation's highest Court, the final arbiter of federal constitutional law, has held this approach to be constitutional, preferable, and broadly applicable as a method of resolving church property disputes.” (*Bjorkman v. Protestant Episcopal Church* (Ky.1988) 759 S.W.2d 583, 585.)

Whether California courts felt obligated to apply “neutral principles” following the *Jones v. Wolf* decision is unknown. However, it cannot be disputed that in the ensuing 30 years California courts have been using “neutral principles,” and have been using it well. They are now accustomed to using it and should be permitted by this Court to go on using this sensible approach. There is no reason to return to the tool shed when “neutral principles” is getting the job done.

6. Religious Denominations Using California Law to Create Separate Entities to Avoid Financial and Legal Liability Should Expect Neutral Principles to be Applied by the Courts.

When a religious denomination such as the Episcopal Church

authorizes the creation of separate legal entities under the Corporations Code to avoid financial and legal entanglement, it should expect courts to apply the same law that governs California's other corporate citizens, namely, "neutral principles of law."

This is the rule in other jurisdictions. After a parish withdrew its affiliation from the Episcopal Church and the Diocese of Lexington, the Kentucky Supreme Court applied "neutral principles" while making the following observation:

"It should be remembered that St. John's acquired the property with no assistance from PECUSA [an acronym for the Episcopal Church]; that the property was managed and maintained exclusively by St. John's; that St. John's improved and added to its property; and that PECUSA deliberately avoided acquisition of title or entanglement with the property to ensure that it would not be subject to civil liability. The record is clear that PECUSA's relationship with St. John's was exclusively ecclesiastical and St. John's was at all times in control of its temporal affairs." (Emphasis added.) (*Bjorkman v. Protestant Episcopal Church, supra*, at p. 587.)

What the Kentucky Supreme Court said about the temporal affairs of the Episcopal parish in *Bjorkman* and the Episcopal Church's desire to avoid legal entanglement is also true of petitioner St. James Parish in Newport Beach and the Diocese of San Joaquin. A truly "hierarchical"

church could order its affairs as it wishes and require real property to be held in its name. This, however, is not the way the Episcopal Church is structured. Instead, parishes and dioceses have their own separate entity status that reduces upstream legal liability. The Episcopal Church benefits because petitioner and the Diocese of San Joaquin were created under and are governed by the Corporations Code and the Episcopal Church should reasonably expect that their temporal affairs will be determined under a “neutral principles of law” approach.

CONCLUSION


Whatever the eventual outcome of this case may be, it should be decided under a “neutral principles of law” standard of review mandated for use by all California courts in church property disputes.

DATED: June 17, 2008

Respectfully submitted,

WILD, CARTER & TIPTON

A Professional Corporation

By 
Russell G. VanRozeboom
Attorneys for Amicus Curiae
Diocese of San Joaquin

DECLARATION OF THE RT. REV. WILLIAM C. WANTLAND

I, The Rt. Rev. William C. Wantland, declare as follows:

Summary Of Qualifications

1. I am a bishop of the Episcopal Church, an attorney, a former judicial officer for the State of Oklahoma, a former seminary professor of Canon Law, and I served two terms as Chairman of the Constitution Committee of the House of Bishops of the Episcopal Church. In addition, I served on the Episcopal Church's Standing Commission on Constitution and Canons which was, and is, charged with, among other things, conducting a "continuing comprehensive review of the Constitution and Canons with respect to their internal consistency and clarity" and to propose amendments thereto as deemed necessary.¹ Altogether, I have 45 years of experience in the ordained ministry of the Episcopal Church, the last 28 of those years as a bishop. A more detailed description of my background and qualifications is

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The duties of the Standing Commission are described in detail in Canon I.1.2(n)(3), pp. 16-17. The Constitution & Canons of the Episcopal Church are in the public domain and available on the website of The Archives of The Episcopal Church:
http://www.episcopalarchives.org/e-archives/canons/CandC_FINAL_11.29.2006.pdf.

set forth below.

2. I make this declaration based on my experience and expertise gained in my professional career, my own first-hand knowledge of the Constitution and Canons of the Episcopal Church, my on-going study of the history of the Episcopal Church, and my review of historical church documents and other documents identified herein. If called as a witness, I could and would competently testify to the facts and opinions set forth herein. Due to the constraints imposed on an amicus curiae, my declaration will be exceedingly brief. My opinions are intended to provide insights into the structure of the Episcopal Church and which may assist the Court by broadening its understanding of the hybrid nature of this religious organization.

Matters For Expert Opinion

3. I have been asked to render an expert opinion about the relationship between the Episcopal Church and its dioceses and, specifically, whether dioceses are subordinate entities or units. I have also been asked to render an expert opinion about the accuracy of statements made in the appellate briefs of the Episcopal Church and the Diocese of Los Angeles, namely, that “[e]ach diocese adopts as part of its Constitution ‘an unqualified

accession to the Constitution and canons of this Church.””

Expert Opinions.

4. Dioceses in the Episcopal Church are not subordinate units.

The Episcopal Church is a confederation of equals formed by existing dioceses, namely, dioceses formed immediately after the American Revolution by priests and laity formerly of the Church of England. The Episcopal Church is hierarchical in the spiritual sense of its three-tiered ministry of bishops, priests and deacons, but autonomous in the way property is independently held and administered by dioceses. Because the Episcopal Church was created by existing dioceses, its Constitution is controlled and limited by the power conferred on it by the dioceses. Powers not specifically delegated by the dioceses and enumerated in the Constitution and Canons of the Episcopal Church were, and are, retained by the dioceses. Dioceses self-organize as self-supporting legal entities by adopting a constitution and canons and thereafter seek admission into the Episcopal Church. The Episcopal Church approves the diocesan constitution as part of the admission process. The Constitution of the Episcopal Church contains no supremacy clause, no reversionary clause, and no limitation on the right or power of a diocese to amend its constitution to withdraw from membership. Thus, the

relationship between a diocese and a national structure is in the nature of a congregational relationship.

5. The construction of the Constitution and Canons of the Episcopal Church demonstrate its hybrid nature. The Constitution and Canons consume some 227 pages. Sixty-one of those pages set out an elaborately detailed procedure for imposing ecclesiastical discipline, including accusation and hearing procedures, judicatory bodies, and appellate levels of review. Trial proceedings are governed under the Federal Rules of Evidence (Canon IV.4.10, p. 137) and appeals are governed under a modified version of the Federal Rules of Civil Appellate Procedure (IV, Appendix B, p. 178). As to temporal matters, however, there are no judicatory bodies and no dispute resolution procedures set forth. The Episcopal Church simply has no authority to meddle into the affairs of its member dioceses, beyond having original jurisdiction to discipline a bishop for an ecclesiastical violation. As to temporal matters, dioceses have plenary power over their property and over the admission of parishes into union with them.

6. Historical precedent exists for dioceses unilaterally withdrawing from the Episcopal Church which is further evidence that dioceses are not subordinate entities. During the Civil War, nine Southern

dioceses seceded from the Episcopal Church, formed a confederate church and kept possession and title to their property. The bishop of Virginia took the view that dioceses possessed the right to secede at will based upon their free association with the national church.² The Episcopal Church took no action against the Southern dioceses because the majority in the Episcopal Church believed a diocese had the right to withdraw from membership. Ultimately, the Southern dioceses returned after the Civil War ended. It is noteworthy, and a compelling affirmation of the right of a diocese to disaffiliate, that the Episcopal Church did not thereafter pass legislation which would prevent a diocese from withdrawing in the future.

7. Statements made by the Episcopal Church and the Diocese of Los Angeles in their appellate briefs that each diocesan constitution contains an “unqualified accession” to the Constitution of the Episcopal Church are highly inaccurate. The original Constitution adopted in 1789 provided for the admission of a new diocese as follows: “[a] Protestant Episcopal Church in any of the United States not now represented, may, at any time hereafter, be

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G. MacLaren Brydon, “The Diocese of Virginia and the Southern Confederacy” *Historical Magazine of the Protestant Episcopal Church* 17 (1948) 395.

admitted, on acceding to this Constitution.”³ This standard of admission remained essentially unchanged until 1982 when the “unqualified accession” language was adopted and specifically made applicable to “new dioceses” formed after the 1982 amendment. A copy of the resolution adopted by the 67th General Convention meeting in New Orleans in 1982 adding the “unqualified accession” language was retrieved from the website of The Archives of The Episcopal Church and is attached as Exhibit 1. (The website address is on the banner of Exhibit 1.) Thus, the original admission standard for a diocese under Article V—“acceding to this Constitution”—remained essentially unchanged for nearly 200 years until Article V was amended in 1982 to add the language “unqualified accession;” a clear admission by the Episcopal Church that its powers under the “acceding to” language were extremely limited. “Acceding” to the Constitution of the Episcopal Church does not mean, and cannot be construed to mean, a wholesale delegation by a diocese of all powers, rights and prerogatives. Most of the dioceses of the

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The Archives of The Episcopal Church maintain a set of Annotated Constitution & Canons on its public domain website: http://www.episcopalarchives.org/White_and_Dykman_combinedvols_1997.pdf. The annotation discusses the history of the “accession” clause from its inception in 1789 to 1982. See Vol. I, at p. 90.

Episcopal Church became members before 1982 and thus are not affected by the “unqualified accession” language applicable to “new dioceses” formed after that date.

8. As noted, the organization and structure of the Constitution and Canons of the Episcopal Church reinforce that dioceses are equals in a confederated association and not “subordinate” entities or “units.”

Nevertheless, a few dioceses (perhaps as few as three) have elected to declare themselves as subordinates. This designation, however, comes from their own diocesan governing documents and not from anything expressed in the Constitution and Canons of the Episcopal Church. For example, the Diocese of Los Angeles states in its constitution that the “authority of this Diocese is vested in and exercised by its Bishop . . . , its Convention and its Standing Committee, acting under and in subordination to the National Church, its General Convention, Constitution, Canons and Regulations. . . .” (Emphasis added.) (Episcopal Church’s Appendix, 4 A.A. 693.) The dioceses of Colorado and Utah contain similar assertions of subordination.⁴ Most of the

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Most dioceses in the Episcopal Church host public domain websites that contain their respective Constitution and Canons. A list of the website addresses for those is attached as Exhibit 2. Colorado and Utah are included.

other diocesan constitutions contain no such proclamations and, specifically, the Diocese of San Joaquin does not.

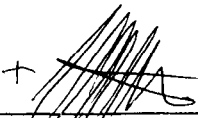
Additional Description of Expert Qualifications.

9. To supplement my background summary provided in paragraph 1 above, I offer the following additional information. I was born in Oklahoma in 1934, and graduated from the University of Hawaii with a BA in history in 1957. I graduated from Oklahoma City University Law School in 1964 with a Juris Doctorate. I received a Doctor of Religion from Geneva Theological College in 1976. I have done advanced studies at Christ Church College, Canterbury in 1978, directed reading at Cambridge University and St. Deniol's Library, Wales, in 1991. I practiced law in Oklahoma (and am still an active member of the Oklahoma Bar Association and the Oklahoma Indian Bar Association). I served as Attorney General of the Seminole Nation of Oklahoma from 1969 to 1977, and served as Presiding Judge of the Municipal Court of the City of Seminole from 1970 to 1977. During that time I served as President of the Oklahoma Conference of Municipal Judges, and received the ABA Award for the most improvement of Judicial Administration of any Court in the United States in cities of 10,000 or less (1972); the Oklahoma Supreme Court Award for Law and Order (1973); I

was a member of the American Judges Association and the American Judicature Society; taught Probate Law at the University of Oklahoma College of Law for 10 years (1969-78); and have taught Canon Law at Nashotah House Seminary since 1983. I also served as Presiding Judge of the Provincial Court of Review in the Episcopal Province of the Midwest of The Episcopal Church from 1981 to 1992. I was Vice Chancellor of the Diocese of Oklahoma from 1977 to 1980. I was the Vice President of the Episcopal Chancellors' Network, and am a member of the Ecclesiastical Law Society of the Church of England, and was a member of the Church Law Association of Canada. I am the author of "Canon Law in The Episcopal Church," used as a text book in several seminaries. I have also published legal articles in the Oklahoma Bar Journal, the American Indian Law Journal and the Ecclesiastical Law Society Journal. I am also cited in "Canon Law in the Anglican Communion" by Norman Doe. I am listed in "Who's Who in America," "Who's Who in Law," "Who's Who in Religion," and "Who's Who in the Midwest." I have appeared on William Buckley's "Firing Line," the "McNeil-Lehrer Report" and the "Oprah Winfrey Show," all debating Jack Spong. I am the author of a number of other books and articles in

theological journals. I was ordained a deacon in May 1963, ordained a priest in July 1970, and consecrated a bishop in the Episcopal Church in 1980. I served as Bishop of Eau Claire from 1980 to 1999, as Bishop of Navajoland from 1993 to 1994, and currently serve as Assisting Bishop of the Diocese of Fort Worth.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct and that this declaration was executed on 13 June, 2008, at Seminole, Oklahoma.



The Rt. Rev. William C. Wantland



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Resolution Number: 1982-A010

Title: Amend Constitution Article V. I [Admission of New Dioceses--Second Reading]

Legislative Action Taken: Concurred As Submitted

Final Text:

Resolved, the House of Bishops concurring. That the following proposed amendments having been made known to the several Dioceses and Missionary Dioceses and the Convocation of the American Churches in Europe in accordance with Article XI of the Constitution, Section 1 of Article V of the Constitution, the 67th General Convention adopt the following amendments to Article V of the Constitution, to wit:

Add the word "existing" before the word "Dioceses" where such word first appears in the second sentence of Section 1 of Article V, and strike the last sentence of said Section and substitute a new sentence therefor, so that said Section 1 as amended will read:

ARTICLE V.

Sec. 1 A new Diocese may be formed, with the consent of the General Convention and under such conditions as the General Convention shall prescribe by General Canon or Canons, (1) by the division of an existing Diocese; (2) by the junction of two or more existing Dioceses or of parts of two or more Dioceses; or (3) by the erection into a Diocese of an unorganized area evangelized as provided in Article VI. The proceedings shall originate in a Convocation of the Clergy and Laity of the unorganized area called by the Bishop for that purpose; or, with the approval of the Bishop, in the Convention of the Diocese to be divided; or (when it is proposed to form a new Diocese by the junction of two or more *existing* Dioceses or of parts of two or more Dioceses), by mutual agreement of the Conventions of the Dioceses concerned, with the approval of the Bishop of each Diocese. In case the Episcopate of a Diocese be vacant, no proceedings toward its division shall be taken until the vacancy is filled. ~~When it shall appear to the satisfaction of the General Convention, by a certified copy of the proceedings and other documents and papers laid before it, that all the conditions for the formation of the new Diocese have been compiled with and that it has acceded to the Constitution and Canons of this Church, such new Diocese shall thereupon be admitted to union with the General Convention.~~

After consent of the General Convention, when a certified copy of the duly adopted Constitution of the New Diocese, including an unqualified accession to the Constitution and Canons of this Church, shall have been filed with the Secretary of the General Convention and approved by the Executive Council of this Church, such new Diocese shall thereupon be in union with the General Convention.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, New Orleans, 1982* (New York: General Convention, 1983), p. C-23.

LEGISLATIVE HISTORY

Author: The Standing Commission on Constitution and Canons

Originating House: House of Deputies

Originating Committee: Committee on Constitution

House of Deputies

Original Text of Resolution:
(A010)

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The Committee recommended that the resolution be adopted without amendment.

A vote by orders was taken--Ballot #3, Resolution A-10.

The Secretary announced the results of Ballot #3, on Resolution A-10.

Lay: Yes--109 NO--1 Divided--1

Clergy: Yes--110 NO--1 Divided--1

**Motion carried
Resolution adopted**

(Communicated to the House of Bishops in HD Message #23)

House of Bishops

On the fourth day, the Secretary read:

HD Message #23--Admission of New Dioceses (A-10).

The House concurred
(Communicated to House of Deputies in HB Message #50)

Resolution Concurred by Both Houses, September 8.

Reference: *The Blue Book*, p. 10.

Abstract: The 67th General Convention amends Constitution Article V.1 to change the procedure for the admission and certification of new dioceses.

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- 47) Diocese of Tennessee <http://episcopal-diocese-tn.org/>
- 48) Diocese of Upper South Carolina <http://edusc.org/>
- 49) Diocese of West Tennessee <http://www.episwtn.org/>
- 50) Diocese of Western North Carolina <http://www.diocesewnc.org/>
- 51) Diocese of Chicago <http://www.epischicago.org>
- 52) Diocese of Eau Claire <http://www.dioceseofeauclaire.org/>
- 53) Eastern Michigan <http://www.eastmich.org/>
- 54) Fond du Lac <http://episcopal-fond-du-lac.org/>
- 55) Diocese of Indianapolis <http://www.indydio.org/diocese/>
- 56) Diocese of Michigan <http://www.edomi.org/>
- 57) Diocese of Milwaukee <http://www.diomil.org/>
- 58) Diocese of Missouri <http://www.diocesemo.org/>
- 59) Diocese of Northern Indiana <http://www.ednin.org/ednin/>
- 60) Diocese of Northern Michigan <http://upepiscopal.org/>
- 61) Diocese of Quincy <http://dioceseofquincy.org/>
- 62) Diocese of Southern Ohio <http://www.episcopal-dso.org/>
- 63) Diocese of Springfield <http://www.episcopalspringfield.org/>
- 64) Diocese of Western Michigan <http://www.edwm.org/>
- 65) Diocese of Colorado <http://www.coloradodiocese.org/>
- 66) Diocese of Iowa <http://www.iowaepiscopal.org/>
- 67) Diocese of Minnesota <http://www.episcopalmn.org>
- 68) Diocese of Montana <http://mtepiscopal.homestead.com/>
- 69) Diocese of Nebraska <http://www.episcopal-ne.org/>
- 70) Diocese of North Dakota <http://www.episcopal-nd.org/>
- 71) Diocese of South Dakota <http://www.diocesed.org/>
- 72) Diocese of Wyoming <http://www.wydiocese.org/>
- 73) Diocese of Arkansas <http://www.episcopalarkansas.org/>
- 74) Diocese of Dallas <http://www.episcopal-dallas.org/>
- 75) Diocese of Fort Worth <http://www.fwepiscopal.org/>
- 76) Diocese of Northwest Texas <http://www.nwt.org/>
- 77) Diocese of Oklahoma <http://www.episcopaloklahoma.org/>
- 78) Diocese of Rio Grande <http://www.dioceserg.org/>
- 79) Diocese of Texas <http://www.epicenter.org>
- 80) Diocese of West Missouri <http://www.diowestmo.org/TheDiocese.asp>
- 81) Diocese of West Texas <http://www.dwtx.org/>
- 82) Diocese of Western Kansas <http://www.westernkansas.org/index.html>
- 83) Diocese of West Louisiana <http://www.diocesewla.org/>
- 84) Diocese of Alaska <http://home.gci.net/~episcopalak/>
- 85) Diocese of Arizona <http://azdiocese.org/>
- 86) Diocese of California <http://azdiocese.org/>
- 87) Diocese of Eastern Oregon <http://www.episdioeo.org/index.htm>
- 88) Diocese of El Camino Real <http://www.edecr.org/index.html>
- 89) Diocese of Hawaii <http://www.episcopalhawaii.org/>
- 90) Diocese of Idaho <http://www.episcopalidaho.org/index.html>
- 91) Diocese of Los Angeles <http://www.ladiocese.org/>
- 92) Diocese of Navajo Land <http://episcopal-navajo.org/>

- 93) Diocese of Nevada <http://www.nvdiocese.org/>
- 94) Diocese of Northern California <http://www.dncweb.org/>
- 95) Diocese of Olympia <http://www.ecww.org/index.cfm>
- 96) Diocese of Oregon <http://www.diocese-oregon.org/>
- 97) Diocese of San Diego <http://www.edsd.org/index.html>
- 98) Diocese of Spokane <http://www.spokanediocese.org/>
- 99) Diocese of Taiwan <http://www.episcopalchurch.org/taiwan.htm>
- 100) Diocese of Utah <http://www.episcopal-ut.org/index.html>

- 1) Diocese of Connecticut <http://www.ctdiocese.org/index.cfm>
- 2) Diocese of Maine <http://maine.anglican.org/>
- 3) Diocese of Massachusetts <http://www.diomass.org/>
- 4) Diocese of New Hampshire <http://nhepiscopal.org/>
- 5) Diocese of Rhode Island <http://www.episcopalri.org/>
- 6) Diocese of Vermont <http://www.dioceseofvermont.org/>
- 7) Diocese of Western Massachusetts <http://www.diocesewma.org/>
- 8) Diocese of Albany <http://www.albanyepiscopaldiocese.org/index.html>
- 9) Diocese of Central New York <http://www.cny.anglican.org/default.aspx?id=1>
- 10) Diocese of Convocation of American Churches in Europe <http://www.tec-europe.org/>
- 11) Diocese of Haiti <http://www.egliseepiscopaledhaiti.org/>
- 12) Diocese of Long Island <http://www.dioceselongisland.org/>
- 13) Diocese of New Jersey <http://newjersey.anglican.org/>
- 14) Diocese of New York <http://diocesenyc.org/>
- 15) Diocese of Newark <http://www.dioceseofnewark.org/>
- 16) Diocese of Rochester <http://www.rochesterepiscopaldiocese.org/jump05.htm>
- 17) Diocese of Virgin Islands <http://www.episcopaldioceseofthevirginislands.com/>
- 18) Diocese of Western New York <http://www.episcopalwny.org/>
- 19) Diocese of Bethlehem <http://www.diobeth.org/>
- 20) Diocese of Central Pennsylvania <http://www.diocesecpa.org/>
- 21) Diocese of Delaware <http://www.dioceseofdelaware.net/>
- 22) Diocese of Maryland <http://www.ang-md.org/>
- 23) Diocese of Northwestern Pennsylvania <http://www.dionwpa.org/aboutus.htm>
- 24) The Episcopal Diocese of Pennsylvania <http://www.diopa.org/>
- 25) Diocese of Pittsburgh <http://www.pghanglican.org/>
- 26) Diocese of Southern Virginia <http://www.diosova.org/>
- 27) The Episcopal Diocese of Southwestern Virginia <http://www.dioswva.org/>
- 28) Diocese of Virginia <http://www.thediocese.net/>
- 29) The Episcopal Diocese of Washington <http://www.edow.org/index.html>
- 30) Diocese of West Virginia <http://www.wvdiocese.org/>
- 31) Diocese of Alabama <http://www.dioala.org/>
- 32) Diocese of Atlanta <http://www.episcopalatlanta.org/>
- 33) Diocese of Central Florida <http://centralflorida.anglican.org/>
- 34) Diocese of the Central Gulf Coast <http://www.diocgc.org/index.htm>
- 35) East Carolina <http://www.diocese-eastcarolina.org/welcome.html>
- 36) Episcopal Diocese of East Tennessee <http://www.etdiocese.net/>
- 37) Episcopal Diocese of Florida <http://www.diocesefl.org/index.php>
- 38) Diocese of Georgia <http://georgia.anglican.org/>
- 39) Diocese of Kentucky <http://www.episcopalky.org/index.html>
- 40) Diocese of Lexington <http://www.dioplex.org/>
- 41) Diocese of Louisiana <http://www.edola.org/>
- 42) Diocese of Mississippi <http://www.dioms.org/>
- 43) Diocese of North Carolina <http://www.episdionc.org/>
- 44) Diocese of South Carolina <http://www.dioceseofsc.org/>
- 45) Diocese of Southeast Florida <http://www.diousef.org/>
- 46) Diocese of Southwest Florida <http://www.episcopalswfl.org/>

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is: 246 West Shaw Avenue, Fresno, California 93704.

On June 17, 2008 I served the document(s) described as:

**APPLICATION TO FILE AMICUS CURIAE BRIEF AND IN SUPPORT
OF THE PETITIONER THE RECTOR, WARDENS AND VESTRYMEN
OF ST. JAMES PARISH IN NEW PORT BEACH, CALIFORNIA**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope at: Fresno, California, addressed as follows:

SEE ATTACHED LIST

X (BY MAIL) I am readily familiar with this business's practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the U. S. Postal Service on the date hereinabove in the ordinary course of business, at Fresno, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee(s).

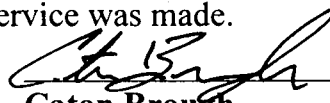
(BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

(BY FACSIMILE) I caused the above-referenced document(s) to be faxed to the offices of the addressee(s).

Executed on June 17, 2008, at Fresno, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Caton Brough

Amicus Curiae
California Supreme Court
Case No. S155094

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**Amicus Curiae
California Supreme Court
Case No. S155094**

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